

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2005 - 0026

REGARDING AN
AMENDMENT TO THE WATER QUALITY CONTROL PLAN
FOR THE SAN FRANCISCO BAY REGION TO
INCORPORATE A TOTAL MAXIMUM DAILY LOAD
(TMDL) FOR MERCURY IN SAN FRANCISCO BAY

WHEREAS:

1. The San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) adopted a revised Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) on June 21, 1995, which was approved by the State Water Resources Control Board (State Water Board) on July 20, 1995 and by the Office of Administrative Law (OAL) on November 13, 1995.
2. On September 15, 2004, the San Francisco Bay Water Board adopted Resolution No. R2-2004-0082 (Attachment) amending the Basin Plan to incorporate a TMDL for mercury in the San Francisco Bay.
3. The State Water Board recognizes the hard work by the San Francisco Bay Water Board staff and the many stakeholders who participated over the last several years to develop this TMDL.
4. The State Water Board finds that this is an “exceedingly complex” TMDL, as described in California Water Code section 13246(b)(1), in that (a) the control of mercury in San Francisco Bay also requires the control of mercury in various upstream waters; (b) this control of mercury requires the development and implementation of numerous additional TMDLs in two regions; and (c) controlling mercury, a bioaccumulative constituent, is exceedingly complex given California’s Gold Rush legacy, the natural presence of mercury in the environment, the ubiquitous nature of society’s use of it, and fact that mercury loading to some degree also emanates from use of fossil fuel natural resources. Furthermore, the State Water Board finds that formal coordination of these TMDLs is appropriate given that the San Francisco is the ultimate drainage for a large portion of the mercury from the Delta.
5. The State Water Board finds that control of mercury would be more effectively addressed through the creation of integrated TMDLs directed to the following water bodies: San Francisco Bay, the Guadalupe River, and the Sacramento/San Joaquin Delta.
6. The State Water Board finds that mercury pollution poses a serious long-term threat to public health and the environment, and therefore finds that time is of the essence in developing an appropriate plan to restore these waters of the State.
7. Numerous water quality objectives and water quality criteria apply to the various water bodies covered by this TMDL. The State Water Board finds that these integrated TMDLs should ensure compliance with all of them where they apply. The State Water Board notes that water quality objectives and criteria may have different implementation requirements.

8. The State Water Board finds that an effective implementation program may include requiring point source dischargers to participate in off site remediation programs.
9. The State Water Board finds that given California's Gold Rush legacy and the number of unremediated and abandoned mines and mining areas, the effort to restore mercury-impaired waters in California would be best accomplished with the active participation of the U.S. Environmental Protection Agency (USEPA, which should use its full authority to commence a comprehensive effort to abate these facilities' contribution to this problem.
10. The State Water Board therefore finds that consideration of the San Francisco Bay mercury TMDL at this time is premature.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Tables the consideration of approval of the amendment to the Basin Plan to incorporate a TMDL for mercury in San Francisco Bay adopted under San Francisco Bay Water Board Resolution No. R2-2004-0082.
2. The San Francisco Bay Water Board staff and the Central Valley Water Board staff shall work with State Water Board staff to develop integrated TMDLs for the Sacramento/San Joaquin Delta, the San Francisco Bay, and the Guadalupe River to address mercury pollution.
3. The integrated TMDLs shall build upon the work already completed in the proposed San Francisco Bay mercury TMDL, and not duplicate that work unless it is necessary to achieve the intent of this resolution.
4. The integrated TMDLs shall ensure attainment of all applicable mercury standards within a reasonable period of time. The staff reports shall include a rationale for the proposed implementation and compliance time schedules, and the appropriateness of the length of time it will take to restore the water bodies to standards.
5. The integrated TMDLs shall include a consideration and documentation of:
 - a. The complexities of the Sacramento/San Joaquin Delta and San Francisco Bay hydrology and whether or not mixing and flushing of sediments will actually occur as San Francisco Bay Water Board staff has indicated;
 - b. The impacts, if any, resulting from mercury discharges from the San Francisco Bay to marine waters outside the Golden Gate;
 - c. The degree to which point source additions of mercury are causing or contributing to violations of water quality standards;
 - d. The appropriateness of the selected margin of safety, which shall be set at a level not less stringent than necessary to ensure that standards are met.
6. If any parts of the applicable standards require review, staff shall propose any needed modifications either before or with the TMDLs.

7. Staff shall present progress reports to the State Water Board every three months. The first progress report shall include a time schedule for completion of this project.
8. The State Water Board expects the San Francisco Bay Water Board to include reopener clauses in any NPDES permit that is revised before effective date of these integrated TMDLs, that would allow the permit to be revised to include the waste load allocations adopted under these TMDLs. The State Water Board also expects that the San Francisco Bay Water Board will maximize aggressive source control measures for mercury within the service area of each facility.
9. In considering the appropriateness of the TMDL waste load allocations, the State Water Board will consider the extent to which USEPA has taken the initiative under its superfund or other authority, to commence a comprehensive effort to remediate abandoned mines in both watersheds.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 16, 2005.


Debbie Irvin
Clerk to the Board